

REMARKS

Claim 48 has been amended. Claims 1 to 31 and 40 to 43 have been previously canceled.

Claims 32 to 36; 38; 39; 44; and 48 remain in the application. Among these, claim 32 is the sole independent device claim, and claims 44 and 48 are independent method claims.

Reexamination and reconsideration are respectfully requested in view of the amendments and the following remarks.

Amended method claim 48 includes providing a motor-driven tool substantially as defined in claim 35. The method includes coupling a fastener to the carrier, accessing a tissue region, and operating the motor control unit in the initial phase to partially implant the fastener in the tissue region. As further defined in claim 48, the method includes during the lull phase requiring a user of the tool to select between action (i) and action (ii) to advance from the lull stage. As further defined in claim 48, action (i) comprise commencing the final phase including entering a first prescribed command to advance the motor control unit from the lull phase to the final phase, thereby completing the implantation of the fastener in the tissue region. As also defined in claim 48, action (ii) comprises the removal phase including entering a second prescribed command (different than the first prescribed command) to advance the motor control unit from the lull phase to the removal phase, thereby withdrawing the fastener from the tissue region.

Support for the subject matter of the amended claims can be found, e.g., on Specification pages 16 to 18 and 27 to 31.

The time and attention of Examiner Ryckman and Examiner Jackie Ho during an interview conducted February 20, 2008 are appreciated. During the interview, inventor Lee Bolduc discussed prior art approaches to the treatment of abdominal aortic aneurysms and attendant problems, e.g., (i) endograft migration (the endograft does not remain in position) including reliance upon radial force from a stent on the endograft and/or barbs or hooks on the endograft, which may not provide sufficient force to hold the device against blood flow, and (ii) the lack of control over barb or hook orientation, placement, and penetration in endovascular tissue. Mr. Bolduc discussed and, using video aids and by manipulating a clinical device brought to the interview, demonstrated how the phased implantation of fasteners, as defined in the claims, provides positive, controllable fixation -- solving the prior problems of fastener placement and penetration, and also providing the ability to retrieve the fastener before final implantation. Mr. Bolduc demonstrated the operation of a clinical

motor-driven device as defined in claim 32 and with the device simulated the methods defined in claims 44 and 48, including the Initial Phase (after fastener loading), the Lull Phase (providing the ability to retrieve), and the Final Phase (fastener release).

During the interview, Mr. Bolduc demonstrated through operation of a clinical motor-driven device the subject matter as now defined in amended method claim 48, including coupling a fastener to the carrier, accessing a tissue region, operating the motor control unit in the initial phase to partially implant the fastener in the tissue region, and, during the lull phase, requiring a user of the tool to select between action (i) and action (ii) to advance from the lull phase. Mr. Bolduc demonstrated action (i) comprising commencing the final phase including entering a first prescribed command to advance the motor control unit from the lull phase to the final phase, thereby completing the implantation of the fastener in the tissue region. Mr. Bolduc also demonstrated action (ii) comprising the removal phase including entering a second prescribed command (different than the first prescribed command) to advance the motor control unit from the lull phase to the removal phase, thereby withdrawing the fastener from the tissue region.

At the conclusion of the interview, the Examiners expressed the view that Amendment B appeared to overcome the rejection under 35 U.S.C 102(b) based upon Scott et al. (US 5,334,196). However, the Examiners expressed their view that the “if” language originally presented in claim 48 was indefinite. Applicant agreed to clarify claim 48 by removal of the “if” language. It is believed that the foregoing amendment to claim 48 accomplishes this.

For the foregoing reasons, claims 32 to 36; 38; 39; 44; and 48 are believed to be in condition for allowance. Applicant requests the opportunity to reinstate withdrawn dependent claim 37 upon allowance of claim 32, which is believed to be generic.

Respectfully Submitted,

By

Daniel D. Ryan
Registration No. 29,243

RYAN KROMHOLZ & MANION, S.C.
Post Office Box 26618
Milwaukee, Wisconsin 53226
(262) 783 - 1300
Customer No.: 26308